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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,560	04/29/2002	Patrick Michael Van Baal	Q67729	8705
23373	7590	12/15/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			LOPEZ, MICHELLE	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/019,560

Applicant(s)

VAN BAAL ET AL.

Examiner

Michelle Lopez

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This action is in response to amendment received on 8/18/04.
2. New claims 13 and 14 have been added.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4, 6-7, 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Olson (6,032,818).

Olson teaches the use of a flexible container made of a film material 1 for containing a fluid substance comprising a fill opening 6 and a partitioning means 45 along which a first container wall part is placed against a second container wall part seen in Figures 6C and 6D, the partitioning means dividing the container in a first and second compartment, characterized in that the partitioning means comprising a restraining

Art Unit: 3721

member 45 which maintains a substantially fluid tight separation of the first and second compartment until a predetermined pressure is achieved in the first compartment, at which predetermined pressure the restraining member is released by the fill pressure for placing the first and second compartment in fluid communication as described in column 5, lines 35-55.

With regards to claims 1 and 9, Olson discloses a flexible container with a generally cylindrical shape, as the flexible container has a hollow cylinder shape, i.e. a tube shape.

With respect to claim 2, Olson teaches wherein the restraining member comprises two closure lines 20 which extend essentially from the top of the container to the bottom thereof.

With respect to claim 3, Olson teaches wherein the front film layer is joined to the back film layer along the closure lines as seen in Figure 6c.

With respect to claim 4, Olson teaches wherein the container is folded double along closure lines, a first layer of the film material folded double being attached via the restraining means to a second layer of the film material folded double as seen in Figure 6c.

With respect to claim 6, Olson teaches a container characterized in that on either side of a center line of the container two side strips of the container are folded double along fold lines located parallel to the center line as seen in Figure 6d.

With respect to claim 7, Olson teaches a portion of the film material 40 has been displaced from the peripheral edge of the container to the center of the container and is

Art Unit: 3721

positioned between wall sections located opposite one another, the restraining member 45 connecting said opposite wall sections as seen in Figure 3.

With respect to claim 9, Olson teaches the steps of placing the flexible container in a relatively rigid container 11, the flexible container being provided with a film material 1 for containing a fluid substance comprising a fill opening and a partitioning means along which a first container wall part is placed against a second container wall part, the partitioning means dividing the container in a first and second compartment characterized in that the partitioning means comprises a restraining member which maintains a substantially fluid tight separation of the first and second compartment, seen in Figures 6a-6d, until a predetermined pressure is achieved in the first compartment at which predetermined pressure the restraining member is released by the fill pressure for placing the first and second compartment in fluid communication, filling the first compartment with the fluid substance via a fill opening 6 in the container, releasing the restraining member 45 vial the fill pressure such that the second compartment is opened and filling the second compartment until the film material of the flexible container is in contact with the wall of the rigid container.

With respect to claim 10, Olson teaches that air is removed from the flexible container before the flexible container is inserted in the rigid container which is described in column 5, lines 55-60.

With respect to claim 11, Olson teaches the container sections folded double being attached to one another by means offering resistance 45 which are released by the fill pressure seen in Figure 6d.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (6,032,818) in view of Bonerb (5,344,048).

Olson discloses the invention substantially as claimed but does not show the means offering resistance comprising adhesive tape.

However, Bonerb teaches the use of a means offering resistance comprising plastic fasteners 68 for the purpose of releasing portions of a bag in order to provide more volume for filling as in column 6, lines 50-60 as seen in Figure 5. Although adhesive tape is not explicitly described, Bonerb does describe that hook and loop fasteners, rope, draw strings, plastic fasteners and other fastening means well known in the art can be used. Adhesive tape is categorized as a plastic fastener and is also well known in the art for fastening.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Olson with adhesive tape in order to secure portions of a bag during filling and then unfastening to allow for further filling of a bag.

Art Unit: 3721

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (6,032,818) in view of Sharples (4,955,512).

Olson discloses the invention substantially as claimed including air being at least partially removed from the container but does not explicitly show a fill opening provided with a shut off valve.

However, Sharples teaches the common use of shut off valves in a fill opening, air being partially removed from the container for the purpose of filling bags under pressure conditions as described in column 2, lines 15-65.

Therefore, it would have been obvious to one having ordinary skill in the art to provide an elastomeric bag with a specific shut off valve arrangement in order to fill bags under pressure.

6. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (6,032,818) in view of Chambers et al. (4,984,713).

Olson discloses a central cylindrical area defined between the closures lines 20 at the upper side of 45, as shown in Fig. 6d, and inserting a flexible container into a rigid container; wherein upon filling and expanding the flexible container, vertical sides of the flexible container outside the closure lines at the vicinity of 1,12 (see Fig. 9a-9c) do not press against the walls of the rigid outer container; and after release of the closures lines 20, the flexible container material outside the closure lines is pressed onto contact with the rigid outer container (see Figs. 9d-9e).

With respect to claim, Olson does not specifically disclose that the rigid outer container has a generally cylindrical shape.

Art Unit: 3721

However, Chambers et al. teaches a rigid outer container 10 with a generally cylindrical shape for the purpose of providing a bottle like rigid outer container having a fixed shape formed with a neck and a bottom portion which withstand a maximum amount of pressure. In view of Chambers et al., it would have been obvious to one having ordinary skill in the art to have provided a rigid outer container 10 with a generally cylindrical shape in order to provide a bottle like rigid outer container.

### ***Allowable Subject Matter***

7. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

8. Applicant's remarks have been fully considered but are deemed non-persuasive.
9. Applicant contends that Olson does not teach or suggest a flexible container with a generally cylindrical shape.

Claims are given their broadest reasonable interpretation.

**gen·er·al·ly** (jèn'ér-e-lê) *adverb*

*Abbr. gen.*

1. Popularly; widely; *generally known*.
2. a. As a rule; usually: *The child generally has little to say*. b. For the most part: *a generally boring speech*.
3. Without reference to particular instances or details; not specifically: *generally speaking*.<sup>1</sup>

**tube** (tjb, tyjb) *noun*

1. a. A hollow cylinder, especially one that conveys a fluid or functions as a passage<sup>1</sup>

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<sup>1</sup> *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.



Art Unit: 3721

Prior to complete filling, Olson's flexible container has a cylindrical shape for the most part, as shown in Figs. 9a-9c.

10. For the reason's above, the grounds of rejection are deemed proper.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Conclusion***

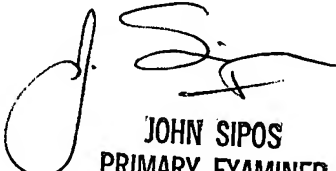
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3721

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML



JOHN SIPOS  
PRIMARY EXAMINER